IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7468 OF 2007

Vijaykumar Vishwasrao Kokate ..Petitioner

Vs.

1. Suresh Wamanrao Nandgaonkar and ors. ..Respondents

Ms. N.D. Buch with Mr. S.K. More for petitioner.
Mr. N.A. Kulkarni for respondent nos.1 to 3.
Mr. P.D. Dalvi for respondent no.4.

CORAM: B.H. MARLAPALLE, J.

Date : December 14, 2007.

P.C.:

1. Heard Ms. Buch the learned counsel for the petitioner who claims to have been elected as one of the members of the General Council of Shahu Soot Kapad Kamgar Sangh, a representative Union under the Bombay Industrial Relations Act, 1946 for the local area of Kolhapur District and for the Cotton Textile Industry.

2. Rule. Mr. Kulkarni appears for the respondent nos.1 to 3 and Mr. Dalvi for respondent no.4. Petition is taken up for final hearing forthwith.

3. The petition impugns the order dated 4/9/2007 passed by the learned Member of the Industrial Court at Kolhapur thereby rejecting applications below Exhs. 70 and 72 filed in Application (ICTU) No.1 of 2006. It appears that there was a dispute regarding the management of the said representative Union and as per order dated 12/1/2007 an Administrator came to be appointed. By the next order dated 3/4/2007 the Administrator was called upon to prepare a provisional list of members by 9/4/2007 and display on the board, besides the objections, if any, on the provisional list of voters and published the final list by 12/4/2007 and on the same day the Administrator was to issue notice calling General Body meeting of the Union for the purpose of election of General Council as well as officer bearers and a notice was to be given strictly in accordance with the provisions of the constitution of the Union. The second direction was regarding audit, as it was alleged that an amount of Rs.1,56,000/- was misappropriated. A Chartered Accountant was directed to be appointed for undertaking the audit and complete the same as early as possible. The Administrator was directed to submit

the next report on or before 27/4/2007. The Administrator submitted reports at Exh.62 and 64 and on 11/7/2007 the learned Member passed an order on the application submitted by the Administrator for his professional fees. The application was allowed by noting that the Administrator had carried out his duty as per the directions of the Court and he was permitted to withdraw an amount of Rs.15,000/- towards his fees. One of the applicants filed an application at Exh.75 contending that he had no faith in the court as the court was without any reasons rushing through the matter. The Administrator filed his say at Exh.76 and denied the allegations as were levelled against him in the application at Exh.75. The learned Member of the Industrial Court was pleased to reject this application at Exh.75 by his order dated 31/7/2007. Prior to this application at Exh.75, application at Exhs.70 and 72 were filed on or about 28/5/2007 and were supported by respective affidavits at Exhs.71 and 73. The application at Exh.70 was filed by the opponents, whereas the application at Exh.72 was filed by the applicant no.2. By the impugned order dated 4/9/2007 both the applications came to be filed and consequently the representative - Union is without an

elected body as of now despite the fact that the Administrator conducted the elections for the General Council which met on 22/5/2007 and elected the Executive Committee as well. 41 members for the General Council have been elected whereas for the Executive Committee there are 11 office bearers and 10 members.

4. The Industrial Court by the impugned order did not agree to hand over the affairs of the Union to the newly elected body and for mainly two reasons i.e.

(a) there was no clarification for the amount of Rs.1,56,000/- to be recovered either in the audit report or the report submitted by the Administrator, and

(b) the election held was not as per the directions set out in the order dated 3/4/2007 and the constitution of the Union.

. When the impugned order was passed the Administrator's report at Exh.81 was also on record and along with the same the audit report was also

placed on record. The learned Member referred to the report Exh.64 and the Administrator was to submit the said report by 28/5/2007. The learned Member also referred to the say of the Administrator filed on 24/7/2007 in which he pointed out that as per the audit report he had received it could not be observed that there was any misappropriation of Rs.1,56,000/-.

5. So far as the newly held elections are concerned, the displeasure of the Industrial Court is reflected in the following observations:-

> "The administrator in his report also nowhere specified as to why notice for calling general body of the union for the purpose of election of general council was not given within the time prescribed by the Court. The Administrator has also no specified and produced the list of membership published by him and as to whether there was any objection from anybody or not on the said list of membership. As well as not specified as to whether there was any occasion of giving hearing to the parties concerned on the issue

of membership list."

. As directed earlier, Mr.Dalvi has placed on record the Administrator's report along with the membership list, provisional as well as final, the objections taken to the provisional membership list, the election programme, election rules, the eligibility criteria rules for the membership to the general council as well as two audit reports. Mr.Kulkarni the learned counsel for respondent nos.1 to 3 has placed on record a copy of the constitution of the Union. It appears from the documents now placed on record that on 9/4/2007 the Administrator had published the provisional list of members, some objections thereto were received and were replied to by him, final voters list was published on 12/4/2007 and a report to the same effect was submitted to the court below. The election programme was published on 29/4/2007 for electing general council for the period from 2007 to 2010. The programme was unitwise and in the first unit (Indocount Industries Ltd.) the election was to take place on 7/5/2007. In the second unit (Urotex Industries & Export Ltd.) the date of

election was 9/5/2007. In the third unit (Ved Textiles Pvt. Ltd.) the election was to take place on 6/5/2007. In the fourth unit (Arvind Cotspin Ltd.) the election was to take place on 10/5/2007 and in the fifth unit (Amit Spinning Industries Ltd.) the election was to take place on 8/5/2007. The total membership of the Union in the five units came to 1316 and 41 members got elected to the general council from these different units. Mr. Kulkarni submitted that various objections have been filed before the Industrial Court as to how the election process conducted was contrary to the election rules as set out in the constitution of the Union and, therefore, the Industrial Court was right in filing the applications rather than handing the affairs of the Union to the newly elected body. Mr.Kulkarni also emphasised on the incomplete audit report and pointed out that as of now it is not known exactly whether an amount of Rs.1,56,000/- was misappropriated or whether some of this amount was donated by any office bearers in the last body and more particularly Mr.Kokate the applicant in application at Exh.72.

6. As noted earlier, it is a representative Union

for the Textile Industry in the Kolhapur (Karveer) District and it cannot remain without the General Council as well as Executive Council for a long time. For the purpose of handing over the charge to them what is necessary is the prima facie considerations and if any elected member was not qualified to contest the election of the General Council it is for the Industrial Court to examine the same issue on the basis of the evidence that the parties may adduce. However, having heard the learned counsel for the respective parties and perused the documents as placed before me, I am satisfied that the newly elected body consisting 41 members to the General Council and the Executive Council elected in the General Council deserves to be handed over the charge of the Union. At the same time, the issue of Rs.1,56,000/- cannot be side-tracked. It will have to be ascertained by leading evidence as to whether the Union has lost the said amount or some of it was received by the Union from any of the office bearers. This is a matter which has to be decided on the basis of documentary as well as oral evidence by the Industrial Court and this will have to be done within a fixed period. The elected body will have to be put on terms for

withdrawal of any money from the Union's funds till this issue of the amount of Rs.1,56,000/- is decided by the Industrial Court.

7. Hence, the petition is partly allowed and it is directed that the newly elected General Council and the Executive Council be handed over the charge of the Union as elected representatives pursuant to the elections held as per programme published on 29/4/2007 and this handing over of the charge will not prevent any member of the Union from challenging the election of any member to the Executive Council on the basis of his eligibility or otherwise and if such a challenge has already been raised it shall be decided by the Industrial Court expeditiously. The Industrial Court is further directed to call upon the parties to lead evidence to settle the controversy regarding the amount of Rs.1,56,000/- and this shall be done as expeditiously as possible and preferably within a period of six months from the date the parties appear before the court. Parties to appear before the court on 7/1/2008. In case the newly elected body requires any amount to be withdrawn from the Union's account, an application to that effect shall be submitted to

the Union and the withdrawals will be only as per order of the Industrial Court in the pending application and this restriction is imposed till the controversy of Rs.1,56,000/- is decided by the Industrial Court. The applications at Exh.70 and 72 stands disposed accordingly. The Administrator to hand over the charge on or about 3/1/2008 and submitted his report to that effect to the Industrial Court by 7/1/2008.

(B.H. Marlapalle,J.)